IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/10/2003

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.18415 of 2003

K.Purushothaman .. Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by the Secretary to Government
Commercial Taxes & Religious
Endowments Department
Fort St. George, Chennai-9.

2. The Deputy Commercial Tax Officer
(Main), Gudiyattam (West)
Assessment Circle
Gudiyattam, Vellore District. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.S.Ramanathan

For Respondents: Mr.Manohar Sundaram
Government Advocate

:ORDER

Aggrieved by the impugned order of provisional assessment dated 14.5.2003 of the second respondent demanding the tax due to the tune of Rs.2,14,868/-, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the second respondent in his proceedings in CST No.361539/2002-03, dated 14.5.2003 and quash the same as illegal and direct the second respondent to pass a fresh order by granting exemption on the interstate sales turnover of Coconut by following the decision of the Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench) Madurai in MTA No.976/2001, dated 14.3.2002 and by following the clarification of the Special Commissioner and Commissioner of Commercial Taxes in Acts Cell III/65129/98, dated 12.3.1999.

2.1. Mr.S.Ramanathan, learned counsel for the petitioner contends that after completion of the assessment year, the respondents have no

jurisdiction to pass a provisional assessment order as per the ratio laid down by the Division Bench of this Court in STATE OF TAMIL NADU Vs. WANDER LIMITED reported in 1990 (Vol:79) STC 421 Madras, following an earlier decision of the Division Bench of this Court in MAHENDRAKUMAR ISHWARLAL & CO VS. DEPUTY COMMERCIAL TAX OFFICER reported in 197 1 (Vol.28) STC 551 Madras.

2.2. Secondly, Mr.S.Ramanathan, learned counsel for the petitioner, contends that the respondents, in the notice dated 27.1.2003, before passing the impugned provisional order dated 14.5.2003, referred to the tax due only for months of December,2002, January,2003 and February,2003, but however, in the impugned provisional assessment order dated 14.5.2003, they included the tax due for the months March,2003 and April, 2003, even without issuing a fresh notice for the same.

2.3. Thirdly, Mr.S.Ramanathan, learned counsel for the petitioner, contends that the provisional assessment order dated 14.5.2003 demanding tax dues for all the five months jointly, without notice and independent order for each month, is bad in law.

3. Mr.Manohar Sundaram, learned Government Advocate fairly concedes that the impugned provisional assessment order dated 14.5.2003 is bad in law in view of the ratio laid down by the Division Bench of this Court in STATE OF TAMIL NADU Vs. WANDER LIMITED reported in 1990 (Vol:79) STC 421 Madras, following an earlier decision of the Division Bench of this Court in MAHENDRAKUMAR ISHWARLAL & CO VS. DEPUTY COMMERCIAL TAX OFFICER reported in 1971 (Vol.28) STC 551 Madras.

4. If that be so, without referring to the other contentions raised by the learned counsel for the petitioner, I am inclined to allow this writ petition and quash the impugned provisional assessment order dated 14.5.2003, however without prejudice to the right of the respondents to pass fresh orders in accordance with law, if they are so advised. No costs. Consequently, W.P.M.P.No.23023 of 2003 is closed.

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P.D.DINAKARAN,J.

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